

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6975**

**BILL NUMBER:** HB 1162

**NOTE PREPARED:** May 1, 2009

**BILL AMENDED:** Apr 29, 2009

**SUBJECT:** Environmental Matters.

**FIRST AUTHOR:** Rep. Tyler

**FIRST SPONSOR:** Sen. Gard

**BILL STATUS:** Enrolled

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** The bill does the following.

*Permits.* This bill provides that if a person has been issued a permit by the Department of Environmental Management (IDEM) to construct, install, or operate a facility, equipment, or a device, the person may not start the construction, installation, operation, or modification of the facility, equipment, or device until the person has obtained any approval required by any county, city, or town in which the facility, equipment, or device is located; and (2) the approval referred to is an approval required by ordinance, rule, or regulation in effect at the time of the permit application.

*Regional Water, Sewer, or Solid Waste District.* The bill allows the board of a regional water, sewer, or solid waste district to adopt an ordinance allowing payment of certain claims in advance of board allowance.

*Definitions.* The bill amends the definition of "restrictive covenant"; amends the definitions of "owner" and "operator" for purposes of exceptions to liability for releases from underground storage tanks (UST) and of "owner or operator" for purposes of exceptions to liability for releases of petroleum.

*Expansion of Remediation Factors.* The bill expands the application of remediation and closure goals, objectives, and standards. It eliminates the authority of IDEM to approve environmental restrictive covenants, delineates the authority of IDEM to enforce covenants. It requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant.

*Liability.* The bill provides that a covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at

the time IDEM issued the certificate of completion.

*Certificate of Completion.* This provision allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant.

*Local Ordinances.* With respect to local ordinances that establish certain land use restrictions, the bill requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to IDEM not later than 30 days after passage, amendment, or repeal. It allows IDEM to waive the 60 days notice requirement. It requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk-based remediation proposals. Remediation and closure goals, objectives, and standards for all remediation projects conducted under hazardous waste management, UST, petroleum, and Hazardous Substances Response Trust Fund statutes must be consistent with the remediation objectives applicable to voluntary remediation work plans. The bill adjusts the circumstances under which additional action is not necessary after creation of a voluntary remediation work plan and the factors on which risk-based remediation objectives based on site-specific risk assessments must be based. It requires IDEM to consider and give effect to environmental restrictive covenants in evaluating risk-based remediation proposals.

*Total Maximum Daily Load (TMDL) for a Pollutant.* The bill requires IDEM in the establishment of the total maximum daily load for a surface water to make every reasonable effort, when IDEM identifies the surface water, to identify the pollutant under consideration for the establishment of the TMDL. The bill establishes procedures IDEM must follow if IDEM (1) is unable to identify the pollutant and later identifies one or more pollutants; or (2) identifies the pollutant and later identifies one or more other pollutants.

*Repeal of Exceptional Use Water.* The bill provides that each exceptional use water designated by the Water Pollution Control Board (WPCB) before June 1, 2009, becomes an Outstanding State Resource Water on June 1, 2009, by operation of law. The bill repeals the definition of exceptional use water, and eliminates all references to that term. It specifies the categories of regulation for all waters of the state.

*Adoption of Rule for Antidegradation Standards.* For all waters of the state, IDEM is required to complete an antidegradation review of the rules of the WPCB that authorize National Pollutant Discharge Elimination System (NPDES) general permits. It permits the WPCB to modify those rules for purposes of antidegradation compliance. After an antidegradation review of a rule is conducted, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review. It provides that an NPDES general permit may not be used to authorize a discharge into an Outstanding National Resource Water (ONRW) or an Outstanding State Resource Water (OSRW), except that a short-term, temporary storm water discharge to an ONRW or to an OSRW may be permitted under an NPDES general permit if the IDEM commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge.

The bill establishes the factors the IDEM commissioner must consider in antidegradation reviews for certain NPDES permits. It establishes a deadline for IDEM to complete the antidegradation review and to act on applications for approval of associated NPDES permits. The bill allows the IDEM commissioner to extend for cause for not more than 90 days the deadline for IDEM to adopt antidegradation standards and implementation procedures.

*Environmental Quality Service Council (EQSC).* The bill requires the IDEM commissioner to annually report to the EQSC plans for the use and implementation of the OSRW Improvement Fund and the balance in the fund. It requires the EQSC to study (1) the advisability of establishing an institutional control registry and

environmental trust fund; and (2) the feasibility of incorporating notice of restrictive covenants and environmental restrictive ordinances into the "One Call" system.

**Effective Date:** Upon passage; June 1, 2009; July 1, 2009.

**Explanation of State Expenditures:** The bill does the following.

*Expansion of Remediation Factors.* The bill expands the application of remediation and closure goals, objectives, and standards. It eliminates the authority of IDEM to approve environmental restrictive covenants and delineates the authority of IDEM to enforce covenants. It requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. The impact of these provisions is not expected to require additional resources.

*Liability.* Agents of the state, IFA, and their officers, agents, and employees are immune from liability for acts or omission related to the maintenance of the inventory and the registry. This provision could save the state expenses associated with liability.

*Certificate of Completion.* This provision clarifies that IDEM can put conditions on certificates of completion. For example, IDEM could require that no future digging be performed at a site where contaminants were covered with dirt or concrete.

*Total Maximum Daily Load for a Pollutant.* This provision will have minimal impact on IDEM expenditures.

*Adoption of Rule for Antidegradation Standards.* IDEM is already in the rulemaking process. The new rule will require additional IDEM resources as IDEM issues permits that are subject to the new rule. The provision will not require additional staff, but rather more work effort.

*Repeal of Exceptional Use Water.* This provision will have minimal impact on IDEM expenditures.

*Environmental Quality Service Council (EQSC).* The bill requires the IDEM commissioner to annually report to the EQSC plans for the use and implementation of the OSRW Improvement Fund. It requires the EQSC to study certain topics. These provisions would have a minimal impact only if the EQSC held a meeting or meetings that it would not have held were it not for the need to study the topics assigned under the bill. If the committee met an additional time or times to consider the topic, per diem and travel expenses for the committee would increase. However, total expenses for the committee could not exceed its budget, which is established by the Legislative Council. The budget for the 2008 interim was \$16,500. EQSC is funded from state General Fund appropriations to the Legislative Council and Legislative Services Agency.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Permits.* The proposal could result in additional administrative expenses for a local unit if the local unit would not have acted on the permit were it not for the fact that the local unit is required to be notified under the provisions of the bill.

*Regional Water, Sewer, or Solid Waste District.* The bill allows the fiscal officer of the district to make claim payments in advance of board allowance for certain kinds of expenses. This provision could result in improved efficiency of payments from districts.

*Local Ordinances.* With respect to local ordinances that establish certain land use restrictions, the bill requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the IFA and IDEM not later than 30 days after passage, amendment, or repeal. The bill allows IDEM to waive the 60-day notice requirement. The impact of this provision is indeterminable.

**Explanation of Local Revenues:**

**State Agencies Affected:** IDEM; EQSC.

**Local Agencies Affected:** Counties, Cities, and Towns; Regional Water, Sewer, or Solid Waste Districts; Governmental entities that submit determinations regarding discharges into waters..

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